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COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
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NO. PD-0398-17

IN THE TEXAS COURT OF CRIMINAL APPEALS

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COURT OF CRIMINAL APPEALS
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THE STATE OF TEXAS
Petitioner
v.
JOSE OLIVA
Respondent

On Review from No. 14-15-01078-CR
in which the Fourteenth District Court of Appeals
considered Cause Number 2025101
from County Criminal Court at Law No. 1
Harris County, Texas
Hon. Paula Goodhart, Judge Presiding

BRIEF FOR RESPONDENT

ORAL ARGUMENT ORDERED

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STATEMENT OF THE CASE

Mr. Oliva agrees with the State's Statement of the Case. He particularly agrees with the State's characterization of the offense in question as "DWI-second." In his briefing in the Court of Appeals, Mr. Oliva labeled the offense in question as Class A misdemeanor DWI. The Court of Appeals used the same label in its opinion. This label is not inaccurate. However, given that there is more than one way for a person to commit a Class A misdemeanor DWI,[1] the best way to label the offense in question is probably "DWI-second." Accordingly, in this brief, Mr. Oliva will refer to the offense in question as "DWI-second."

[1] The State recognized this is the case. *See* State's Brief on Discretionary Review at 1 which pointed out that a Class A misdemeanor DWI also exists under Tex. Penal Code Ann. § 49.04(d) (West Supp. 2016) (DWI is a Class A misdemeanor – instead of a Class B misdemeanor – "[i]f it is shown on the trial of an offense under this section that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed.").

STATEMENT REGARDING ORAL ARGUMENT

This Court has directed the parties to participate in oral argument.

ISSUE PRESENTED

Mr. Oliva agrees with the State's description of the issue presented. That description is formulated as follows:

> Whether a prior DWI conviction is an offense element or punishment enhancement in DWI-second offenses.

STATEMENT OF FACTS

Mr. Oliva agrees with the State's Statement of Facts. However, Mr. Oliva wishes to set out some additional facts.

The charging instrument in the case was an information which, in its heading, described the misdemeanor charge as "Driving While Intoxicated."[2] The information read as follows:

> **IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS**
>
> Comes now the undersigned Assistant District Attorney of Harris County, Texas on behalf of the State of Texas, and presents in and to the County Criminal Court at Law No. _____ of Harris County, Texas, that in Harris County, Texas, **Jose Oliva,** hereafter styled the Defendant, heretofore on or about **May 10, 2015,** did then and there unlawfully operate a motor vehicle in a public place while intoxicated.
>
> It is further presented that before the commission of the offense alleged above, on JUNE 4, 2003, the Defendant was convicted of the offense of DRIVING WHILE INTOXICATED in Cause No. 1162140 in COUNTY CRIMINAL COURT AT LAW No. 12, HARRIS County, Texas.[3]

Mr. Oliva pleaded not guilty to the charge and the case went to trial before a jury.[4] The trial court's charge to the jury on guilt-innocence made no mention of Mr.

[2] C.R. at 8.
[3] C.R. at 8.
[4] 3 R.R. at 5.

Oliva's alleged previous DWI conviction.[5] The pertinent portion of the court's charge read as follows:

> Therefore, if you believe from the evidence beyond a reasonable doubt that the Defendant, JOSE OLIVA, on or about the 10th day of May, 2015, in Harris County, Texas, did while intoxicated, namely, not having the normal use of the Defendant's mental or physical faculties by the reason of the introduction of alcohol into the Defendant's body, operate a motor vehicle in a public place, or if you believe from the evidence beyond a reasonable doubt that the Defendant , JOSE OLIVA, on or about the 10th day of May, 2015, in Harris County, Texas, did then and there unlawfully while intoxicated, namely, having an alcohol concentration of at least 0.08 in the Defendant's breath, operate a motor vehicle in a public place, you will find the Defendant guilty.
>
> If you do not so believe or if you have reasonable doubt thereof, you will find the Defendant not guilty.[6]

The jury returned a verdict of guilty.[7] The trial court then announced that the punishment phase of the trial would ensue after a short break.[8]

At the outset of the punishment phase, the trial judge directed the following question to Mr. Oliva's counsel:

> So he [Mr. Oliva] is going to plead not true to the enhancement paragraph?[9]

[5] C.R. at 105-07.
[6] C.R. at 105-06.
[7] C.R. at 108.
[8] 4 R.R. at 51.
[9] 5 R.R. at 5.

Mr. Oliva's counsel responded in the affirmative.[10] The prosecutor then proceeded to read what the trial judge had just described as an enhancement paragraph.[11] The prosecutor orally read the paragraph as follows:

> In the name and by the authority of the State of Texas: It is further presented that before the commission of the offense alleged above, on June 4, 2003, the defendant was convicted of the offense of driving while intoxicated in Cause No. 1162140, in County Criminal Court at Law No. 12 in Harris County, Texas.[12]

Mr. Oliva pleaded "not true,"[13] and the presentation of evidence by both sides followed.[14] At the conclusion of the evidence in the punishment phase, the trial judge charged the jury, in pertinent part, as follows:

> You have found the Defendant, JOSE OLIVA, guilty of the offense of driving while intoxicated. It now becomes your duty to assess punishment.
>
> In addition, the information alleges the Defendant has been at least once before convicted of the offense of driving while intoxicated. To this allegation, the Defendant pleaded "Not True." You must now determine whether this allegation is true beyond a reasonable doubt and assess punishment.
> . . . .
> [I]f you find from the evidence beyond a reasonable doubt that the defendant, JOSE OLIVA, was convicted on JUNE 4, 2003, in Cause Number 1162140, in the COUNTY CRIMINAL COURT OF LAW #12 of Harris County, Texas, for the offense of driving while intoxicated, and that

[10] 5 R.R. at 5.
[11] 5 R.R. at 5-6.
[12] 5 R.R. at 5-6.
[13] 5 R.R. at 6.
[14] 5 R.R. at 6-39.

> said conviction was a final conviction prior to the commission of the offense for which you have found the Defendant guilty, then you must so find and assess the Defendant's punishment at confinement in county jail for any term of not less than 30 days or more than one year. In addition to confinement, you may assess a fine not to exceed four thousand ($4,000.00) dollars.
>
> However, if you do not find from the evidence beyond a reasonable doubt that the Defendant is a repeat offender, you must assess his punishment at confinement in county jail for any term of not less than 72 hours or more than 180 days. In addition to confinement, you may assess a fine not to exceed two thousand ($2,000.00) dollars.[15]

The jury found that Mr. Oliva had once before been convicted of driving while intoxicated and assessed his punishment at 180 days in jail.[16] The Court's written judgment reflected that Mr. Oliva had been convicted of "DWI 2ND" and the degree of offense was labeled as a "Class A Misdemeanor." [17]

[15] C.R. at 109.
[16] C.R. at 112.
[17] C.R. at 112.

SUMMARY OF THE ARGUMENT

Jose Oliva was charged by information with the offense of DWI-second. The offense is a Class A misdemeanor.[18] One of the elements of the offense is that the defendant was previously convicted one time of DWI.[19] As with any element of an offense, sufficient evidence of the prior DWI conviction must be presented at a jury trial's guilt-innocence phase. Here, the prior-DWI-conviction element was treated as a punishment enhancement to the offense of Class B misdemeanor DWI. Thus, no evidence of the prior DWI conviction was presented until the punishment phase of the jury trial. As a result, insufficient evidence of the previous DWI-conviction was presented at guilt-innocence. Appropriately, the Court of Appeals found the evidence was insufficient to support Mr. Oliva's conviction for Class A misdemeanor DWI. The Court of Appeals reversed the judgment of the trial court and remanded the case to that court for a new punishment hearing for a Class B misdemeanor DWI conviction. The Court of Appeals' ruling should not be disturbed. Mr. Oliva agrees with the summary of the argument advanced by the State which reads as follows:

> Because Texas Penal Code Section 49.09(a) dictates that one prior DWI conviction raises the level of a charged DWI offense from a Class B misdemeanor to a Class A misdemeanor, the prior conviction is an element of DWI-second offenses. Therefore, this Court should hold as such and overrule authority that contends the prior conviction is a punishment enhancement.[20]

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[18] *See* Tex. Penal Code Ann. § 49.09(a) (West Supp. 2016).
[19] *See id.*
[20] State's Brief on Discretionary Review at 4.

ARGUMENT

A previous DWI conviction is an element of the offense of DWI-second – not merely a fact serving to enhance punishment on a Class B misdemeanor DWI.

"A person commits an offense [of driving while intoxicated – DWI] if the person is intoxicated while operating a motor vehicle in a public place."[21] Generally, DWI is a Class B misdemeanor.[22] But DWI is a Class A misdemeanor "if it is shown on the trial of the offense that the person has previously been convicted one time of" DWI.[23] Similarly, DWI is a third-degree felony "if it is shown on the trial of the offense that the person has previously been convicted two times of" DWI.[24]

Class B misdemeanor DWI and DWI-second are separate and distinct offenses. We learn this from this Court's opinion in *Barfield v. State.*[25] The offense at issue in *Barfield* – felony DWI – was treated as an entirely separate offense from Class B misdemeanor DWI.[26] This Court noted that the prosecutor read

> the portion of the indictment that alleged felony DWI, that is, that the appellant had committed DWI and that he had been twice previously convicted of DWI.[27]

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[21] Tex. Penal Code Ann. § 49.04(a) (West Supp. 2016).
[22] Tex. Penal Code Ann. § 49.04(b) (West Supp. 2016). ("Except as provided by Subsections (c) and (d) and Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.").
[23] Tex. Penal Code Ann. § 49.09(a) (West Supp. 2016) (emphasis added). The offense calls for a minimum term of confinement of 30 days. *Id.*
[24] Tex. Penal Code Ann. § 49.09(b) (West Supp. 2016) (emphasis added). *See Priego v. State,* 457 S.W.3d 565, 569 (Tex. App.—Texarkana 2015, pet. ref'd) ("Under Texas law a person is guilty of DWI, third offense, if the person (1) having been two times previously convicted of an offense related to the operation of a motor vehicle while intoxicated (2) is intoxicated (3) while operating a motor vehicle (4) in a public place.").
[25] *Barfield v. State,* 63 S.W.3d 446 (Tex. Crim. App. 2001).
[26] *See id.* at 448.
[27] *Id.*

As can be seen from the above-quoted language, this Court distinguished DWI from felony DWI. Felony DWI is an independent offense that includes DWI, but adds two previous DWI convictions. Significantly, this Court said:

> [t]he two previous convictions of DWI are jurisdictional elements of the offense of felony DWI, which must be alleged to invoke the jurisdiction of the felony court and which must be proved to obtain a conviction of felony DWI.[28]

Just as Class B misdemeanor DWI and felony DWI are separate offenses, Class B misdemeanor DWI and DWI-second are separate offenses. And just as two previous DWI convictions are necessary elements of felony DWI, one previous DWI is a necessary element of DWI-second.[29]

The initial appeal in the *Barfield* case (prior to the case going to this Court) was handled by the Fourteenth Court of Appeals which said:

> The prior DWI convictions are not enhancements reserved for the punishment stage, but are rather part of the proof at the guilt/innocence stage for felony DWI. Because the State failed to put on evidence of appellant's two prior convictions in the guilt-innocence phase of trial, it did not prove the essential elements of the offense of felony DWI. Thus, the evidence is legally insufficient to support appellant's conviction.[30]

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[28] *Id.*

[29] The necessary element of one previous DWI conviction in a DWI-second is not a "jurisdictional element." This is because a court with jurisdiction over Class B misdemeanors also has jurisdiction over Class A misdemeanors. This Court spoke of jurisdictional elements in *Barfield* because the two previous DWI convictions made the offense a felony. District courts only have jurisdiction over felony DWI cases– not misdemeanor DWI cases. But the fact that a previous DWI conviction is not a "jurisdictional" element of DWI-second, does not mean the element is an unnecessary one.

[30] *Barfield v. State,* 999 S.W.2d 23, 25-26 (Tex. App. Houston [14th Dist.] 1999, *rev'd,* 63 S.W.3d 446 (Tex. Crim. App. 2001) (internal citation).

This Court reversed the Court of Appeals' decision because *Barfield* involved a bench trial as opposed to a jury trial.[31] This Court said:

> in a trial without a jury on a plea of not guilty, evidence that is introduced at the "punishment stage" of trial is considered in deciding the sufficiency of the evidence to prove guilt.[32]

But in a jury trial, the Fourteenth Court's reasoning that evidence of prior DWI convictions must be presented during guilt-innocence is still a valid holding. As this Court said in *Barfield*:

> In a genuinely bifurcated trial before a jury on a plea of not guilty, evidence that is introduced at the punishment stage can have little, if any, effect on the force of the evidence on the issue of guilt. In such a case, therefore, our consideration of the evidence is necessarily limited to that evidence before the jury at the time it rendered its verdict of guilt.[33]

In summary, a previous DWI conviction is an element of DWI-second that must be proven in the guilt-innocence phase of a jury trial.[34] But not every court of appeals

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[31] *Barfield v. State,* 63 S.W.3d 446 (Tex. Crim. App. 2001).

[32] *Id.* at 450. This Court reasoned that in a bench trial, there actually is no bifurcated trial procedure. *Id.* at 449. This Court said:

> The bifurcated-trial procedure that the district court used is not authorized in a trial without a jury. . . . The bifurcation statute is applicable only to pleas of guilty before a jury. The statute has no application to a trial before the court on a plea of not guilty. *Id.* at 449-50 (internal quotation marks and footnoted citations omitted).

[33] *Id.* at 450.

[34] *See Mapes v. State,* 187 S.W.3d 655, 658-661 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd) ("one prior DWI is a required element of the offense of Class A misdemeanor DWI under Section 49.09(a)"). *Accord Luna v. State,* 402 S.W.3d 849, 851 (Tex.App.—Amarillo 2013, no pet.) (citing *Calton v. State,* 176 S.W.3d 231 (Tex. Crim. App. 2005).

has properly understood this concept. For example, consider the 2005 case of *Blank v. State,*[35] in which the Fourth Court of Appeals said:

> [W]hen a defendant is charged with a Class A misdemeanor driving while intoxicated, the prior driving while intoxicated conviction is treated as an enhancement provision of the information, and not an element of a separate offense.[36]

But the *Blank* Court based its holding on the 1992 case of *Love v. State.*[37] The foregoing statement from the *Blank* Court would have been accurate in 1992. But the law regarding DWI changed in 1993 in that DWI-second became an independent offense.[38] So the *Blank* Court's statement in 2005 erroneously relied on the 1992 *Love* opinion which had interpreted a statute that was changed a year later.[39]

The relevant statute prior to September 1, 1993 was Tex. Rev. Civ. Stat. Ann. art. 6701/-1(d).[40] The full text of Article 6701/-1 is set out in an appendix to this Court's opinion in *Wilson v. State.*[41] Subsection (d) said:

> If it is shown on the trial of an offense under this article [concerning DWI] that the person has previously been convicted one time of an offense under this article, the offense is punishable by: (1) a fine of not less than $300

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[35] *Blank v. State,* 172 S.W.3d 673 (Tex. App.—San Antonio 2005, no pet.).
[36] *Id.* at 676.
[37] *Love v. State,* 833 S.W.2d 264, 265-66 (Tex.App.—Austin 1992, pet. ref'd).
[38] Act of May 29, 1993, 73rd R.S., ch. 900, § 1.01, secs. 49.04, 49.09, 1993 Tex. Gen. Laws 3697-98.
[39] Other opinions erroneously relied on the *Love* decision long after 1993 when the Texas Legislature changed the law on which *Love* was based. *See Prihoda v. State,* 352 S.W.3d 796, 806 (Tex. App.—San Antonio 2011, pet. ref'd); *Byrd v. State,* No. 14-96-00572-CR, 1997 WL 167152, at *1-2 (Tex. App.—Houston [14th Dist.] April 10, 1997, pet. ref'd) (mem. op. not designated for publication).
[40] Act of May 18, 1983, 68th Leg. R.S., ch. 303 § 3, art. 6701/-1, 1983 Tex. Gen. Laws 1568
[41] *Wilson v. State,* 772 S.W.2d 118 (Tex. Crim. App. 1989).

> or more than $2,000; and (2) confinement in jail for a term of not less than 15 days or more than two years.[42]

The 1993 change to this statute made a first DWI a Class B misdemeanor offense.[43] A second DWI was made a separate Class A misdemeanor offense.[44] Thus, for over twenty years now, a first DWI conviction has been an element of DWI-second.[45] The Fourteenth Court of Appeals' opinion in the current case did not change the law – it just recognized the law as it has stood for the last two decades.

Does treating a prior DWI conviction as an element of DWI-second that must be proved during guilt-innocence violate Code of Criminal Procedure Article 36.01(a)(1)?

No.

In its brief, the State mentioned *Wood v. State*[46] which runs counter to the idea that a prior DWI conviction must be proved during guilt-innocence.[47] In *Wood,* the First Court of Appeals found the defendant's attorney to have been ineffective. The attorney was found ineffective because he allowed the State to introduce the defendant's

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[42] *Id.*
[43] Act of May 29, 1993, 73rd R.S., ch. 900, § 1.01, secs. 49.04, 49.09, 1993 Tex. Gen. Laws 3697-98. *See* Tex. Penal Code Ann. § 49.04(b) West Supp. 2016).
[44] Act of May 29, 1993, 73rd R.S., ch. 900, § 1.01, secs. 49.04, 49.09, 1993 Tex. Gen. Laws 3697-98. *See* Tex. Penal Code Ann. § 49.09(a) (West Supp. 2016).
[45] The State cites several other cases in support of this proposition including *Gibson v. State,* 995 S.W.2d 693, 694-97 (Tex. Crim. App. 1999) and *Dryman v. State,* No. 05-15-00078-CR, 2015 WL 8044124, at *2 (Tex. App.—Dallas Dec. 7, 2015, pet. ref'd) (mem. op. not designated for publication). *See* State's Brief on Discretionary Review at 7.
[46] *Wood v. State,* 260 S.W.3d 146 (Tex. App.—Houston [1st Dist.] 2008, no pet.).
[47] *See* State's Brief on Discretionary Review at 9.

prior DWI offense during the guilt-innocence phase of a DWI-second trial.[48] The Court of Appeals said the introduction of this evidence violated Article 36.01(a)(1) of the Code of Criminal Procedure which reads as follows:

> (a) A jury being impaneled in any criminal action, except as provided by Subsection (b) of this article, the cause shall proceed in the following order:
>
> (1) The indictment or information shall be read to the jury by the attorney prosecuting. When prior convictions are alleged for purposes of enhancement only and are not jurisdictional, that portion of the indictment or information reciting such convictions shall not be read until the hearing on punishment is held as provided in Article 37.07.[49]

The Court of Appeals said Article 36.01(a)(1) was "enacted to prevent the extreme prejudice that almost inevitably results" when prior convictions are referenced during guilt-innocence.[50] The Court noted the situation was not one "in which the jury at the guilt-innocence phase may be informed of the existence of prior convictions for driving while intoxicated because the prior convictions are necessary to establish jurisdiction in the district court for a felony grade criminal case."[51] The Court's note seemed to indicate that referencing prior convictions during guilt-innocence in a felony

[48] *Wood v. State,* 260 S.W.3d at 148-49.
[49] Tex. Code Crim. Proc. Ann. Art. 36.01(a)(1) (West 2007).
[50] *Wood v. State,* 260 S.W. 3d at 148-49.
[51] *Id.* at 147 n.1.

DWI would be okay. This is because the prior conviction is an element of the crime that is necessary to prove in order to give the district court jurisdiction.

With all due respect to the First Court of Appeals, the *Wood* case appears to have been wrongly decided. The Court should have treated the DWI-second case at issue the same way the Court said a felony DWI case would be treated. A close look at Article 36.01(a)(1) makes this clear.

The statute says that portion of the information reciting a prior conviction must not be read to the jury until the punishment phase when <u>two</u> conditions exist. The two conditions are contained in a portion of one sentence of statutory text as follows:

> [w]hen prior convictions are [1] alleged for purposes of enhancement only and [2] are not jurisdictional.[52]

The first condition <u>is not</u> satisfied in a DWI-second case. The fact that a prior DWI conviction exists is not alleged for purposes of enhancement only. Rather, a previous DWI conviction is an element of DWI-second.[53]

The second condition <u>is</u> satisfied in a DWI-second case. The existence of a prior DWI conviction is not necessary to establish jurisdiction in a court different than one handling Class B misdemeanor DWI cases. A court with subject matter jurisdiction over Class B misdemeanors also has subject matter jurisdiction over Class A

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[52] *See* Tex. Code Crim. Proc. Ann. Art. 36.01(a)(1) (West 2007).
[53] *See Mapes v. State,* 187 S.W.3d at 658-661.

misdemeanors (such as DWI-second). But the fact that this second condition is satisfied does not serve to activate Article 36.01(a)(1)'s prohibition. Only if both conditions are satisfied is that portion of an information reciting a prior conviction not be read to the jury until punishment. The *Wood* Court incorrectly believed that if alleging a prior DWI conviction is unnecessary for jurisdictional purposes, then such an allegation is necessarily for enhancement purposes only. This is not the case. But this mistaken idea led to the *Wood* Court's incorrect conclusion.

While Article 36.01(a)(1) is not implicated in DWI-second cases, the rationale for the statute still exists in such cases. The introduction of evidence of a prior DWI might well prejudice a defendant. As noted earlier, Article 36.01(a)(1) was "enacted to prevent the extreme prejudice that almost inevitably results" when prior convictions are referenced during guilt-innocence.[54] This Court has recognized that a balance must be struck between allowing the introduction of evidence of a prior DWI and Rule of Evidence 403.[55] Rule 403 calls for the exclusion of relevant evidence "if its probative value is substantially outweighed by a danger of . . . unfair prejudice."[56] In *Tamez v. State,* a felony DWI case, this Court struck the balance as follows:

> In cases where the defendant agrees to stipulate to the two previous DWI convictions, we find that the proper balance is struck when the State reads the indictment at the beginning of trial, mentioning only the two

[54] *Wood v. State,* 260 S.W. 3d at 148-49.
[55] *See Tamez v. State,* 11 S.W.3d 198 (Tex. Crim. App. 2000).
[56] *See* Tex. R. Evid. 403.

> jurisdictional prior convictions, but is foreclosed from presenting evidence of the convictions during its case-in-chief. This allows the jury to be informed of the precise terms of the charge against the accused, thereby meeting the rationale for reading the indictment, without subjecting the defendant to substantially prejudicial and improper evidence during the guilt/innocence phase of trial.[57]

Applying *Tamez* to DWI-second situations, a defendant should be allowed to stipulate to a prior DWI conviction. Upon doing so, the State should read the full information at the beginning of the guilt-innocence phase of a jury trial.[58] But the State should not present evidence of the prior DWI conviction during the guilt-innocence phase.

Defense counsel in DWI-second cases have a legitimate concern that their clients may be prejudiced by the introduction of evidence of a prior DWI conviction. But this concern can largely be ameliorated by a client's stipulation of the existence of a prior DWI conviction.

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[57] *Tamez v. State,* 11 S.W.3d at 202.

[58] In the current case, the information contained two paragraphs. C.R. at 8. The second paragraph alleged the existence of a conviction for a prior DWI. The prosecutor did not read this paragraph to the jury at the beginning of the trial's guilt-innocence phase. This was a mistake – the paragraph should have been read at that time.

PRAYER

Mr. Oliva respectfully prays that this Court affirm the decision of the Fourteenth Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 14, 2017, I provided this brief to the Harris County District Attorney via the EFILETEXAS.gov e-filing system. This service is required by Texas Rule of Appellate Procedure 9.5.

Additionally, I certify that on September 14, 2017, I provided this brief to the State Prosecuting Attorney via the EFILETEXAS.gov e-filing system. This service is required by Texas Rules of Appellate Procedure 68.11 and 70.3.

/s/ Ted Wood
TED WOOD
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Attorney for Respondent

CERTIFICATE OF COMPLIANCE

As required by Texas Rule of Appellate Procedure 9.4(i)(3), I certify that this brief contains 3,811 words. This word-count is calculated by the Microsoft Word program used to prepare this brief. The word-count does not include those portions of the brief exempted from the word-count requirement under Texas Rule of Appellate Procedure 9.4(i)(1). The number of words permitted for this type of computer-generated brief (a brief in response in an appellate court) is 15,000. Tex. R. App. P. 9.4(i)(2)(B).

/s/ Ted Wood

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